



Development of Amendments to Rules Concerning Lead-Based Paint Activities

#02-189(APCB)

Overview

House Enrolled Act (HEA) 1171 passed by the Indiana General Assembly in 2002 required the air pollution control board to amend 326 IAC 23 to reflect the following statutory requirements: add a definition of “component” consistent with the meaning set forth in 24 CFR 35.110, as in effect on July 1, 2002; add a provision that lead-based paint activities licenses expire on June 30, 2004, if issued before July 1, 2002, or three years after issuance, if issued after June 20, 2002; provide for license renewal for a period of three years; add a provision that a license fee covers the period the license is in effect; add provisions to provide for a clearance examiner license and clearance examiner training program that meets minimum federal requirements as established at 40 CFR 745, Subpart L, as in effect on July 1, 2002; add a provision to establish a fee of not more than \$1000 per course, per year, for a clearance examiner training program seeking approval of a clearance examiner training course and provides that certain entities may not be required to pay the clearance examiner training program fee; add provisions applicable to remodeling, renovation, and maintenance activities at target housing and child occupied facilities built before 1960 and lead based paint activities. Current rules 326 IAC 23-1, 326 IAC 23-2, 326 IAC 23-3, 326 IAC 23-4, have been amended and 326 IAC 23-5 has been added to reflect the requirements of HEA 1171. Additionally, the draft language proposed for preliminary adoption: incorporates recent changes to 40 CFR 745 that establish standards for lead-based paint hazards in pre-1978 housing and child-occupied facilities; is responsive to certain comments from affected sources; and reflects minor wording changes for purpose of clarifying existing rule language.

Citations Affected

Amends: 326 IAC 23-1-4; 326 IAC 23-1-4.5; 326 IAC 23-1-5; 326 IAC 23-1-6.5; 326 IAC 23-1-7.5;

326 IAC 23-1-7.6; 326 IAC 23-1-9; 326 IAC 23-1-10; 326 IAC 23-1-11; 326 IAC 23-1-11.5; 326 IAC 23-1-12.5; 326 IAC 23-1-17; 326 IAC 23-1-21; 326 IAC 23-1-21.5; 326 IAC 23-1-22; 326 IAC 23-1-27; 326 IAC 23-1-27.5; 326 IAC 23-1-32.1; 326 IAC 23-1-32.2; 326 IAC 23-1-32.6; 326 IAC 23-1-33.5; 326 IAC 23-1-34; 326 IAC 23-1-48.5; 326 IAC 23-1-52; 326 IAC 23-1-52.5; 326 IAC 23-1-54.5; 326 IAC 23-1-55.1; 326 IAC 23-1-58.5; 326 IAC 23-1-59.5; 326 IAC 23-1-60.1; 326 IAC 23-1-60.5; 326 IAC 23-1-60.6; 326 IAC 23-1-61.5; 326 IAC 23-1-62.5; 326 IAC 23-1-62.6; 326 IAC 23-1-63; 326 IAC 23-1-64; 326 IAC 23-1-69.5; 326 IAC 23-1-69.6; 326 IAC 23-1-69.7; 326 IAC 23-1-71; 326 IAC 23-2-1; 326 IAC 23-2-3; 326 IAC 23-2-4; 326 IAC 23-2-5; 326 IAC 23-2-6; 326 IAC 23-2-6.5; 326 IAC 23-2-7; 326 IAC 23-2-8; 326 IAC 23-2-9; 326 IAC 23-3-1; 326 IAC 23-3-2; 326 IAC 23-3-3; 326 IAC 23-3-5; 326 IAC 23-3-7; 326 IAC 23-3-11; 326 IAC 23-3-12; 326 IAC 23-3-13; 326 IAC 23-4-1; 326 IAC 23-4-2; 326 IAC 23-4-3; 326 IAC 23-4-4; 326 IAC 23-4-5; 326 IAC 23-4-6; 326 IAC 23-4-7; 326 IAC 23-4-9; 326 IAC 23-4-11; 326 IAC 23-4-12; 326 IAC 23-4-13.

Adds: 326 IAC 23-5.

Repeals: 326 IAC 23-1-23; 326 IAC 23-1-37; 326 IAC 23-1-40; 326 IAC 23-1-42; 326 IAC 23-1-43; 326 IAC 23-1-44; 326 IAC 23-1-45; 326 IAC 23-1-46; 326 IAC 23-1-47.

Affected Persons

- Licensed individuals and contractors who perform lead-based paint abatement activities in certain specified housing and child-occupied facilities.
- Training course providers who provide training to individuals to obtain a license through the state to perform lead-based paint abatement activities.
- Persons who perform nonabatement activities during remodeling, renovation, and maintenance activities at target housing and child-occupied facilities and lead-based paint activities.
- Persons who have lead nonabatement activities

performed in their homes.

Reasons for the Rule

IDEM established a lead-based paint program in 326 IAC 23, effective February 5, 1999, to ensure that a person conducting lead-based paint activities in certain specified housing and child-occupied facilities does so in a manner that protects the health of the building's occupants, especially children six (6) years of age and younger. This program requires a person to be licensed by IDEM to perform lead-based paint abatement activities. It establishes fees for the licensing of individuals, contractors, and the approval of training courses and training course providers. This program is similar to the accreditation program for asbestos workers.

The 2002 Indiana General Assembly's 112th session amended IC 13-17-14 concerning lead-based paint activities in House Enrolled Act (HEA) 1171. This rulemaking action adds these amendments and additions to 326 IAC 23.

On January 5, 2001, the U.S. EPA issued a final regulation under Section 403 of the Toxic Substances Control Act (TSCA) as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (40 CFR 745), also known as Title X, to establish standards for lead-based paint hazards in pre-1978 housing and child-occupied facilities. IDEM has added specific amendments to 326 IAC 23 from this Federal Register (66 FR 1205).

Economic Impact of the Rule

There will be a beneficial economic impact to those persons affected by this rule and a significant fiscal impact to the Lead-Based Paint Program in IDEM.

HEA 1171 lengthened the license renewal schedule from annual to triennial, but did not change the allowable fees. IDEM has evaluated its expected resource needs under this revised schedule and has developed a fee schedule that reduces fees for most disciplines and keeps the remainder level. Overall, fee revenue will decrease.

There are six license disciplines in the rule that currently pay an annual license fee. Four disciplines including inspector, risk assessor, project supervisor, and contractor pay an annual fee of \$150, \$450 for three years at the current fee rate. There will be a cost savings to these disciplines of \$300 over the 3-year renewal cycle. The current project designer discipline annual fee is \$100 (\$300 for 3 years). This fee will increase to \$150, but the fee will cover a 3-year period. There will be a cost savings of \$150

over a 3-year period with the proposed fee schedule.

The current worker discipline annual fee is \$50 (\$150 for 3 years). This fee will also increase to \$150 but the fee will cover a 3-year period. There will be no change in total cost over a 3-year period as a result of the fee increase.

A seventh license discipline, clearance examiner, was added under HEA 1171. The fee for this license will be \$150 over a 3-year renewal cycle.

Benefits of the Rule

- Provides cost savings to most licensees by providing that a single proposed fee covers the 3-year renewal period.
- Provides cost savings to licensees by extending the amount of time between required training courses from 18 to 36 months.
- Requires minimal resubmittal of paperwork required for reapproval of training course providers.
- Adds provisions for licensing reciprocity for applicants.
- Adds three ASTM wipe samples methodologies to the rule.
- Establishes appropriate work practice standards for non-abatement activities that may disturb lead based paint.
- Protects future property owners by requiring disclosure prior to lease or sale of a lead-based paint inspection report.

Description of the Rulemaking Project

- Adds definitions to make Indiana rules consistent with federal rules for lead-based paint.
- Amends wipe sample procedures.
- Amends soil abatement procedures to add minimum lead concentration amounts.
- Adds clearance examiner as a new license discipline and new course of study as required by HEA 1171.
- Adds a list of exceptions from HEA 1171 for exemption from fee payment.
- Adds a rule to incorporate work practice standards for non-abatement activities as required by HEA 1171.
- Maintains one year fee amount for 4 license disciplines, increases two license discipline fees. However, provides cost savings to applicants of \$150 to \$300 dollars by extending license renewal requirements to 3 years.
- Removes 1999 grandfathering language no longer needed in the rule.
- Removes specific hazardous waste disposal requirements as lead paint is not a regulated waste.

- Requires persons requesting duplicate lead-based paint license to submit documents in person with 2 pieces of identification.
- Provides license reciprocity requirements for applicants currently licensed by other U.S. EPA approved states or Indian tribes.
- Reduces amount of paperwork necessary to be submitted for training course reapproval.
- Adds disclosure requirements for property owners of a lead-based paint inspection report to protect occupants and buyers of the property.
- Amends lead abatement notification procedures to remove asbestos terms not applicable to lead-based paint.

Scheduled Hearings

First Public Hearing: Noticed for February 5, 2003, Indiana Government Center South, Conference Room C, Indianapolis, Indiana. The hearing was opened and continued to March 5, 2003, at the Indiana Government Center South, Conference Room C, Indianapolis, Indiana..

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new and amended rules are consistent with federal laws and guidance.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Suzanne Whitmer, Rule Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027, extension 2-8229 (in Indiana). Technical information may be obtained from David White, Asbestos and Lead-Based Paint Section, Office of Air Quality, (317) 232-8219 or (800) 451-6027, extension 2-8219 (in Indiana).